

### **III. Remarks/Arguments**

The Office Action dated February 3, 2006 has been received and carefully considered.

Claims 1-18 are pending in the application. Applicants respectfully traverse the rejections of the pending claims based on evidence of prior invention as described below. Reconsideration is respectfully requested in view of the following information.

#### **Pending Rejections**

Claims 1, 3-5, 10-12 and 16-18 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 5,854,932 to Mariani ("Mariani") in view of U.S. Patent No. 6,167,563 to Fontana et al ("Fontana"). Claims 2, 6-9 and 13-15 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mariani and Fontana in further view of U.S. Patent No. 6,112,024 to Almond ("Almond").

#### **Rejection of Claims 1, 3-5, 10-12 and 16-18 under 35 U.S.C. § 103(a)**

On page 2 of the Office Action Claim 1, 3-5, 10-12 and 16-18 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mariani in view of Fontana. The Office Action alleges that Mariani teaches the invention substantially as claimed with the exception of "automatically identifying dependent objects, automatically causing appropriate functions to be performed on the dependent objects and automatically causing execution of the selected function on the selected object" (Office Action, Page 4) This rejection is hereby respectfully traversed.

Mariani teaches "[a] minimal rebuild system and process for minimizing rebuilding of a user's programming project analyzes and records dependencies of object code files compiled in a previous build of the project on classes declared in header files. When rebuilding the project, the system detects and records changes made to the classes and header files since the project was last built. The system then determines whether to recompile the object code files from their

respective source code files by comparing the recorded dependencies and changes. If an object code file's dependencies do not intersect the changes, recompiling of the object code file can be omitted. The minimal rebuild system utilizes an approximate representation of the dependencies to yield an efficient system while ensuring that the project is correctly rebuilt.” Mariani  
Abstract.

The Office Action asserts that Mariani’s system for selectively compiling object code teaches the claims. Specifically, the Office Action asserts the following correlations between the elements of claim 1 and the Mariani system.

- (i) “receiving a command to perform a selected function on a selected object” corresponds to users directly modifying source code files and header files;
- (ii) “identifying dependent objects referred to by the selected object” refers to generating dependency information for an object code file;
- (iii) “determining using a computer processor an appropriate manner of executing the selected function” corresponds to determining when recompiling can be avoided by determining how the object code files are dependent on the header files;
- (iv) “determining using a computer processor appropriate functions to be performed on the dependent objects” corresponds to selectively recompiling the source code files so as to detect changes to all header files that were changed since the last project build, wherein the system then utilizes the detected changes to the header files to determine which of the remaining source code files to recompile and which can be avoided;
- (v) “causing the appropriate functions to be performed on the dependent objects” corresponds to the act of either compiling a selected source file into an object file or, if the compiling was omitted for that source file, resaving the object file; and
- (vi) “causing the execution of the selected function on the selected object in the appropriate manner” corresponds to recompiling the source code files that were changed since the last project build.

Office Action, pp. 2-3.

First, Mariani does not teach or suggest “determining using a computer processor an appropriate **manner** of executing the selected function” as recited in limitation (iii) of claim 1. The Office Action asserts that determining when a function (e.g., recompiling) can be avoided

(or not avoided) amounts to determining an “appropriate manner” of performing the function.

The word “manner” refers to the way that something is done, not the fact of whether or not it is done. Similarly, the limitation “determining whether to execute a selected function” is not an example of “determining...an appropriate **manner** of executing the selected function,” as recited in claim 1. To assert that a “manner” can be taught by a simple “yes or no” determination strips the word “manner” of any meaning. To put it another way, an “appropriate manner” of performing a function cannot be to perform the function, nor can it be to not perform the function.

Further, the cited features of Mariani do not collectively teach the elements of claim 1 because they fail to maintain a consistent notion of the recited claim elements (in particular, the recited nouns such as “selected object”). In other words, the Office Action has not shown a single, coherent embodiment of Mariani that teaches all the elements of the claims. Rather, the Office Action applies disparate features of Mariani that accomplish dissociated tasks. For instance, to teach the “selected function” of claim 1, the Office Action alternately applies “modifying code” in element (i) and “recompiling” in elements (iii) and (vi). Similarly, to teach a “selected object,” the Office Action appears to apply a “source code file” in element (i), an “object code file” in element (ii), and specific source code files that were changed since the last project build in element (vi).

Thus, Mariani fails to teach claim 1 as well as claims 10 and 18, which have some related limitations. The same arguments apply to claims 3-5, 11, 12, 16, and 17, which depend from and incorporate the limitations of claims 1 and 10.

The Office Action acknowledges that Mariani does not disclose all the limitations as recited in the claims. As stated on Page 4 of the Office Action, “Mariani does not specifically

teach automatically identifying dependent objects, automatically causing appropriate functions to be performed on the dependent objects and automatically causing execution of the selected function on the selected object.”

As discussed above, Mariani fails to disclose at least the limitations directed to an teach automatically identifying dependent objects, automatically causing appropriate functions to be performed on the dependent objects and automatically causing execution of the selected function on the selected object. Similarly, Fontana does disclose or teaches the missing limitations of Mariani.

Fontana discloses “an inquiry is made as to whether or not the user wants to update dependent components .. if the answer to this inquiry is no, then the components and dependent components [are not updated]” (Fontana Column 7, lines 27-30) Fontana further discloses “[After response to the inquiry] if the user does want to update dependent components [then the components are updated]” (Fontana Column 7, Lines 35-53). Applicant respectfully submits that updating dependent components in response to a user prompt is not the equivalent of “automatically identifying dependent objects, automatically causing appropriate functions to be performed on the dependent objects and automatically causing execution of the selected function on the selected object.”

The Office Action has failed to set forth a *prima facie* case of obviousness for the claims. Specifically, when a primary reference is missing elements, the law of obviousness requires that the Office set forth some motivation why one of ordinary skill in the art would have been motivated to modify the primary reference in the exact manner proposed. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664 (Fed. Cir. 2000). In other words, there must be some recognition that the primary reference has a problem and that the proposed modification will solve that exact

problem. All of this motivation must come from the teachings of the prior art to avoid impermissible hindsight looking back at the time of the invention.

The mere fact that Mariani can be modified does not render the resultant modification obvious unless there is a suggestion or motivation found somewhere in the prior art regarding the desirability of the combination or modification. *See* M.P.E.P § 2143.01; *see also In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Fritz*, 23 U.S.P.Q.2d 1780 ( Fed. Cir. 1992). In addition, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In *In re Hedges*, 783, F.2d 1038, 1041, 228 U.S.P.Q. 685, 687, (Fed. Cir. 1986), the U.S. Court of Appeals for the Federal Circuit stated that "the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill." The court also stated that "[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art" (quoting *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (CCPA, 1965)). Accordingly, the Office has failed to provide any proper motivation for modifying Mariani, so the proposed modification fails. Even if Mariani could be modified as suggested by the Office Action, the resulting combination would nevertheless fail to show each and every limitation claimed by Applicants.

Therefore, the proposed combination of Mariani and Fontana fail to show, teach or make obvious the invention as claimed by Applicants. The Office Action has failed to provide proper motivation for modifying the Mariani reference. Even if the Mariani reference could be

modified as suggested by the Office Action, the resulting combination would fail to disclose the combination of claimed limitations. Therefore, the Office Action has failed to meet its burden. The rejection of claims 1-18 should be withdrawn and the claims allowed accordingly.

Thus, Mariani fails to teach claim 1 as well as claims 10 and 18, which have some related limitations. The same arguments apply to claims 3-5, 11, 12, 16, and 17, which depend from and incorporate the limitations of claims 1 and 10.

**Rejection of Claims 2, 6-9 and 13-15 under 35 U.S.C. § 103(a)**

On page 7 of the Office Action Claim 2, 6-9 and 13-15 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Mariani and Fontana in further view of Almond. Applicant respectfully traverses this rejection.

Mariani does not teach or suggest the elements of claims 1 and 10 as discussed above. Because claims 2, 6-9, and 13-15 depend from claims 1 and 10 and therefore incorporate the limitations of claims 1 and 10 by reference, Mariani similarly fails to teach or suggest claims 2, 6-9, and 13-15. Fontana and Almond fail to remedy the deficiencies of Mariani. Thus, the combination of Mariani, Fontana and Almond fails to teach or suggest the elements of claim 2, 6-9, and 13-15.

The Office Action alleges that the meta model disclosed by Almond as “a schema - meta model - which facilitates version control .. In essence, the model serves as a container which facilitates version control.” Almond, Column 3, lines 1-6 The present application discloses

“The access of data resources as described above relies on modules, reports, documents, prompts, filters, templates, metrics, custom groups, consolidations, searches, attributes, facts, hierarchies, transformations, partitions, tables, functions, users, database instances, schedules, etc. These data are distinct from the data are distinct from the data resources that are hosted and accessed by the system. These data that are created, stored and used by the system during its operation are referred to as metadata”

Page 12, lines 19-21 - Page 13, lines 1-3.

Applicant respectfully submits that the meta model disclosed by Almond does not teach “the selected object is contained in metadata of an on-line analytical processing system.”

As for claim 6, the Office Action asserts that Mariani as modified teaches the limitation of receiving a command to copy a selected object from a source project to a destination project. In particular, the Office Action cites a passage of Almond stating “the user will perform versioning activities such as...Get -- copy one or multiple objects to the user’s local directory.” Almond, col. 39, lines 28-32. Almond’s reference to copying objects fails to teach the subject matter of claim 6 because this feature cannot be combined with Mariani in the manner prescribed by claim 6.

Claim 6 recites “wherein the step of receiving is a step of receiving a command to copy a selected object from a source project to a destination project.” Claim 6 also incorporates the limitations of claim 1, which in the context of claim 6 require the “identifying,” “determining...manner,” “determining...functions,” “causing...functions,” and “causing the execution” actions to be performed in accordance with the “command to copy a selected object from a source project to a destination project.” Mariani teaches away from a combination with Almond in this context. The Office Action uses Mariani’s system for selectively recompiling object code to purportedly establish how Mariani teaches the elements of claim 1. However, while the Mariani system is specifically designed to selectively recompile object code, it is not configured to copy objects in the manner by which it recompiles object code. Copying and recompiling are completely different operations that require completely different systems and methods. Thus even if Mariani taught the limitations of claim 1 (which it does not), the Mariani system cannot be combined with Almond to copy objects in the way that it selectively

recompiles object code. Thus, the combination of Mariani and Almond does not teach or suggest claim 6.

For at least these reasons, Applicants respectfully request that the instant rejection of claims 2, 6-9 and 13-15 be withdrawn.



#### **IV. Request for Information**

In the Office Action, the Office issued a Requirement for Information under 37 C.F.R.

§1.105 “a copy of MicroStrategy 7.x so that the reference can be properly considered.”

Applicants are not sure how to respond to this request. MicroStrategy 7.x is a software system, so it is unclear how to provide a copy of a software system. Applicants assume that the Office is requesting copies of documentation related to MicroStrategy 7.x. Therefore, a ZIP file containing ten user/administrator directed manuals for MicroStrategy 7.0.0 released on or after June 20, 2000 is being enclosed with this response. After reviewing this information, if the Office would like additional information about MicroStrategy 7.x, Applicants request that the Office be more specific about what it is requesting.

V. **Conclusion**

For the reasons set forth above, it is respectfully submitted that all outstanding rejections have been overcome or rendered moot. Further, all pending claims are patentably distinguishable over the prior art of record. Applicants accordingly submit that these claims are in a condition for allowance. Reconsideration and allowance of all claims is respectfully requested.

If the Examiner believes that a telephone conference or interview would advance prosecution of this application in any manner, the undersigned stands ready to conduct such a conference at the convenience of the Examiner.

If there are any fees due which are not enclosed herewith please charge such fees to our Deposit Account No. 50-0206.

Respectfully submitted,

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